

No. 7106-4Lab-76/33229.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s. Motoren Industries, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 162 of 1975

between

SHRI JAI NAND SINGH, WORKMAN AND THE MANAGEMENT OF M/S.  
MOTOREN INDUSTRIES, FARIDABAD

AWARD

By order No. ID/FD/20-A-75.62498, dated the 29th September, 1975, the Governor of Haryana, referred the following dispute between the management of M/s. Motoren Industries, Faridabad and its workman Shri Jai Nand Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Jai Nand Singh was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them.

Whereas the workman alleged,—*vide* claim statement filed by him that the management dismissed him from service in January, 1967 on false, vague, baseless and unjustified charges, without holding any impartial and fair enquiry and that he was entitled to reinstatement with continuity of service and full back wages, the management denied these allegations and pleaded that the enquiry held against him on charges of misconduct relating to his negligence in the discharge of his duties and acts subversive of discipline was proper, legal and in accordance with principles of natural justice. They otherwise raised preliminary objections that two earlier references having been already made and rejected. This reference was barred by *res judicata* and Shri Jai Nand Singh was no more a workman and there was no industrial dispute between the parties after the two earlier references had been rejected. It was further stated that the reference made in the year 1975 in respect of dismissal of the workman made in the year 1967 was belated and there was no cause of action justifying a demand raised by the workman on the management.

The workman controverted the pleas of the management and reiterated the allegations made in the claim statement,—*vide* rejoinder filed by him with the result that the following issues were framed on pleas of the parties,—*vide* my order dated 10th February, 1976:—

- (1) Whether this reference is barred on principles of *res judicata*.
- (2) Whether Shri Jai Nand Singh was a workman within the definition of this term as given under section 2(s) of the Industrial Disputes Act?
- (3) Whether this reference is barred for the preliminary objections taken up by the management?
- (4) Whether the termination of services of Shri Jai Nand Singh was justified in and order? If not, to what relief is he entitled?

Issues Nos. 1 to 3 were treated as preliminary. I have heard learned authorised representatives of the parties with reference to the evidence led by them on these issues and decide the same as under:—

Issues Nos. 1, 2 and 3—

The admitted facts of the case are that on the management ordering dismissal of the workman with effect from 31st January, 1967, the later raised a demand, dated the 22nd February, 1967 copy Exhibit M-1 on the former for his reinstatement with continuity of service and full back wages on the ground of illegality of the termination of his service. The Secretary to Government, Haryana, Labour and Employment Departments made a reference, dated the 15th July, 1967 copy Exhibit M-2 to the Labour Court, Rohtak, for adjudication of the dispute as to whether the termination of services of Shri Jai Nand Singh was justified in and order. Shri P. N. Thukral, the then Presiding Officer, Labour Court,—*vide* his award, dated the 2nd October, 1968 copy Exhibit M-3 disposed of the reference while holding the enquiry made against the workman as vitiated and ordering the reinstatement of the workman with continuity of service and full back wages. The management assailed

this award by way of filing of writ petition registered in the High Court at No. 3619 of the year 1968. The Secretary to Government, Haryana, Labour and Employment Departments made another reference copy Exhibit M—4 in the year 1974 to the Industrial Tribunal, for adjudication of the aforesaid dispute. Shri O. P. Sharma, the then Presiding Officer, Industrial Tribunal, Haryana, held this reference as unmaintainable in view of the pendency of the Writ Petition in the High Court,—*vide* his order, dated 9th April, 1975 copy Exhibit M—5. The Hon'ble Punjab and Haryana High Court accepted the writ Petition,—*vide* order, dated 11th April, 1975 copy Exhibit M—6 while quashing the award, dated the 2nd October, 1968 copy Exhibit M—3 on the only ground that Shri P. N. Thukral disposing of the reference, dated the 15th July, 1967 copy Exhibit M—2,—*vide* award, dated the 2nd October, 1968 copy Exhibit M—3 had not been duly appointed as Presiding Officer, Labour Court. The Secretary to Government, Haryana, Labour and Employment Departments made yet another reference for the third time to Industrial Tribunal, Haryana, on 23rd April, 1975 for adjudication of the aforesaid dispute.

Whereas Shri R. C. Sharma, the learned authorised representatives for the management vehemently contended on the basis of the admitted facts of the case as stated above, that the two references having been disposed of earlier in the manner as stated above, the dispute between the parties shall be deemed to have been finally adjudicated upon leaving no case of action for the workman justifying raising of a fresh demand, dated the 2nd May, 1975 leading to this reference which should be held as unmaintainable and barred by *res judicata*, Shri Madhu Sudan Saran Cowshish strenuously urged that the dispute could not be said to have been finally adjudicated on merits under the circumstances of the case and has to be held as still alive requiring adjudication. He stressed that the award, dated the 2nd October, 1968 was quashed by the High Court on the technical ground of want of jurisdiction of the Presiding Officer to decide the reference and that the merits of the case thus remained undecided and that the second reference was thrown out merely on the ground of the pendency of the Writ Petition in the High Court filed by the management against the award, dated the 2nd October, 1968 enforceable till it was quashed. I have given the matter my careful consideration. Shri R. C. Sharma relied upon the following observations of the Supreme Court made in 1970 Labour Indian Cases 1033 between J.M. Shelat, C. A. Maidialingam and P. Jagmohan Reddy in support of his contention that the third reference made to the Industrial Tribunal was barred by the *res judicata* and could not be said to be in respect of an existing industrial dispute.

"No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it is no longer exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

The aforesaid dictum of the Hon'ble the Supreme Court is not helpful to the case of the management, inasmuch as the industrial dispute between the parties now referred for third time on a fresh demand dated 12th May, 1975 made by the workman cannot be said to have been adjudicated upon either,—*vide* an award, dated the 2nd October, 1968 copy Exhibit M—3 or,—*vide* award, dated the 9th April, 1975 copy Exhibit M—5 or,—*vide* order, dated the 11th April, 1975 copy Exhibit M—6 of the Hon'ble Punjab and Haryana High Court and shall be deemed to be still existing. The third reference in respect of an existing industrial dispute is therefore obviously not barred by *res judicata* and is legal and valid in all respects and the workman has yet a cause of action justifying a demand on the management. The mere circumstances that it is belated does not warrant its rejection particularly when the delay made was not due to the fault of the workman and was on the other hand far reason beyond his control.

R. C. Sharma authorised representative for the management admitted,—*vide* his statement, dated the 23rd April, 1976 that Shri Jai Nand Singh was drawing less than 500 P.M. as his wages on the date of termination of his services, while working as Inspector in Supervisory Committee. Such an admission well brings the case of Shri Jai Nand Singh within the definition of workman as given in section 2(s) of the Industrial Disputes Act, as under:—

#### Section 2(s)

"Workman" means any person (including an apprentice employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person".

I, therefore, decide issue No. 2 in favour of the workman and issues Nos. 1 and 2 against the management. Notices be now issued to the parties for their appearance before me on 10th August, 1975 at Faridabad.

Dated the 9th July, 1976.

MOHAN LAL JAIN,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 889, dated the 9th July, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 2nd/6th December, 1976

No. 11650-4Lab-76/33169.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the Management of M/s Maheswari Company (P) Ltd., 14/4, Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 140 of 1976

between

SHRI MOHINDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S. MAHESHWARI COMPANY (P) LTD., 14/4, MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/FD/756-A-74/23087, dated the 6th July, 1976 the Governor of Haryana, referred the following dispute between the management of M/s. Maheswari and Company (P) Ltd., 14/4, Mathura Road, Faridabad and its workman Shri Mohinder Singh to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes, Act, 1947.

Whether the termination of services of Shri Mohinder Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference notices were issued to the parties for 23rd August, 1976. The parties were served. The process server reported as regard the service on the management that the management refused to receive the notice, hence on 23rd August, 1976, when the representative of the workman appeared and the management or their authorised representative did not appear, my learned predecessor ordered *ex parte* proceedings against the management and ordered for *ex parte* evidence of the workman. The *ex parte* evidence was recorded on 27th October, 1976. The concerned workman appeared as his own witness and gave statement on oath. He stated that some clerk of the management insulted him in the open. The workman requested the said clerk not to insult the workman in open. The workman further requested the said clerk that if at all he had to tell such things then such things should be told to him privately, i.e., when he was alone. Thereafter the next day when the workman went to his duties he was not allowed entry in the factory of the management. Prior to that there was no complaint of the workman. He then sent a letter to the management Ex. W—1 and sent it by registered post, the postal receipt is Ex. W—2. He then served upon the management a demand notice, copy whereof is Ex. W—3. Postal receipt pertaining to the demand notice is Ex. W—4. Conciliation proceedings were started, the management appeared there. There the representative of the management stated that the concerned workman was a foreman and 21 workmen were under him, he was doing supervisory job and used to grant leave to the workman but the management or his representative did not appear before this Tribunal.

Going through the evidence of the workman, although it is an *ex parte*, I am satisfied that the termination of services of Shri Mohinder Singh the concerned workman was not justified and not in order. Therefore, he is entitled to reinstatement with full back wages and continuity of service. I award as follows:—

- (1) That the termination of services of the said Shri Mohinder Singh is not justified and is not in order.
- (2) He is entitled to reinstatement with full back wages and continuity of service.

Dated the 8th November, 1976.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 1233, dated the 8th November, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947

Dated the 8th November, 1976

NATHU RAM SHARMA  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad

The 3rd December, 1976

No. 10547-4Lab-76/33021. —In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, in respect of the Labour Court, Rohtak in respect of the dispute between the workmen and the management of M's. Auto Steering India Private Ltd., Faridabad

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference N. 81 of 1972

*between*

SHRI NIHAL SINGH, WORKMAN AND THE MANAGEMENT OF M'S. AUTO STEERING  
INDIA PRIVATE LTD., FARIDABAD

AWARD

By order No. ID/ED/286-A-71/8431, dated 1st March, 1972, the Governor of Haryana, referred the following dispute between the management of M's. Auto Steering India Private Ltd., Faridabad and its workman Shri Nihal Singh, to this Court, for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 :

"Whether the termination of services of Shri Nihal Singh was justified and in order ? If not, to what relief is he entitled ?"

The parties put in their appearance in this Court in response to the usual notices of reference sent to them.

The management, however, intimated,—*vide* their letter, dated 12th November 1975 that the Honourable High Court, New Delhi had appointed Shri S.C. Mittal as Provisional Liquidator to take care of the affairs of the company which had gone in liquidation and that notice of this reference be as such issued to the liquidator. On a notice being issued to Shri S. C. Mittal, he—*vide* his letter, dated 12th July 1976 prayed for stay of the proceedings of the reference under section 446 of the Company's Act, 1956 on the ground that final winding up of the order of the company had been passed by the High Court on 26th May, 1976. He was as such directed by me to send a copy of the order, dated 29th July, 1976,—*vide* my order, dated 29th July, 1976, made in the presence of Shri Roshan Lal, authorised representative of the workman.

It is, however, interesting to note that neither the workman nor his authorised representative Shri Roshan Lal appeared on 14th September, 1976 the next date of hearing fixed in the case and that no order of the High Court was received from the official liquidator. The absence of the workman under the circumstances indicated that he was not interested in pursuing the demand raised by him on the management leading to this reference and there is now no dispute between the parties requiring adjudication

I hold accordingly and answer the reference while returning the award in these terms

Dated 29th September, 1976

MOHAN LAL JAIN.  
Presiding Officer,  
Labour Court, Haryana, Rohtak

No. 2225, dated the 4th October, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947

MOHAN LAL JAIN.  
Presiding Officer,  
Labour Court, Haryana, Rohtak